

# **EXHIBIT C**

**BINGHAM**

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April 18, 2012

**Via First Class Mail**

Mr. Raymond J. Ruble  
Inmate No. 58202-054  
USP Lewisburg  
U.S. Penitentiary  
P.O. Box 2000  
Lewisburg, PA 17837

**Re: *Salem Financial, Inc. v. United States of America,*  
U.S. Court of Federal Claims No. 1:10-cv-00192-TCW**

***Santander Holdings USA, Inc. v. United States of America,*  
Civil No. 09-cv-11043-GAO (USDC D. Mass.)**

Dear Mr. Ruble:

I am one of the attorneys representing Santander Holdings (Sovereign) and Salem Financial (BB&T) in the above-referenced STARS refund matters. The Department of Justice (Tax Division) has filed motions in both cases seeking to take your deposition. I enclose copies of the motions for your reference.

We understand that you previously advised the IRS that you would exercise your Fifth Amendment right to remain silent if the IRS sought to question you in connection with the Bank of New York STARS refund litigation. I am writing to confirm whether you also intend to exercise your Fifth Amendment rights if you are deposed in the Santander Holdings and Salem Financial STARS cases. I would appreciate your advice in this regard.

Thank you for your assistance.

Very truly yours,



James C. McGrath

JCM/lal  
Enclosures

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**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

No. 10-192 T

(Judge Thomas C. Wheeler)

SALEM FINANCIAL, INC.,  
As Successor-in-Interest to  
Branch Investments LLC,

Plaintiff,

V.

THE UNITED STATES OF AMERICA,

Defendant.

**UNITED STATE'S R.C.F.C. 30(a)(2)(B) MOTION FOR LEAVE TO DEPOSE AN  
INMATE**

Defendant United States of America respectfully moves this Honorable Court for an order under Rule 30(a)(2)(B) of the Court of Federal Claims granting leave to depose Mr. Raymond J. Ruble (inmate number 58202-054), an incarcerated individual. In support of this motion, the United States submits:

1. Mr. Ruble is incarcerated the United States Penitentiary located in Lewisburg, PA, 200 miles north of Washington, DC and 170 miles west of Philadelphia, PA.
2. The United States seeks to depose Mr. Ruble as part of discovery in this case. On information and belief, Mr. Ruble was the primary author of the prototype STARS opinion issued by Sidley Austin LLP (f/k/a/ Sidley Austin Brown & Wood) ("SABW").

3. Mr. Ruble was later convicted of multiple counts of income tax evasion in connection with his role concerning a tax shelter known as BLIPS, which was designed and marketed by KPMG and affiliates. *United States v. Raymond J. Ruble*, 2009 U.S. Dist. LEXIS 34908, \*1 (S.D.N.Y. 2009). With respect to the BLIPS and other shelters at issue in the criminal case, Mr. Ruble was involved with designing tax shelters and worked with KPMG to “offer ostensibly independent tax opinions as to the likelihood that the tax shelters would survive Internal Revenue Service (“IRS”) scrutiny.” *United States v. Ruble* at \*3-4.
4. While Mr. Ruble may assert his Fifth Amendment Privilege in response to questions regarding his role in the STARS transaction, the United States will seek that an adverse inference be drawn from his refusal to testify. While an assertion of the privilege cannot be used to the detriment of a criminal defendant, a court may constitutionally permit a jury to draw an adverse inference from the refusal to testify on Fifth Amendment grounds by either a witness or party in a civil suit. *See Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976) (“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.”); *RAD Services, Inc. v. Aetna Casualty and Surety Co.*, 808 F.2d 271, 276-77 (3<sup>rd</sup> Cir. 1986), citing *Brink's Inc. v. City of New York*, 717 F.2d 700 (2d Cir. 1983), and *Rosebud Sioux Tribe v. A & P Steel, Inc.*, 733 F.2d 509 (8<sup>th</sup> Cir. 1984). As such, his testimony, even if he asserts the privilege, will be relevant and probative here.

5. The parties stipulated that, if leave under R.C.F.C. 30(a)(2)(B) is granted, this deposition can take place after the close of substantial fact discovery, which occurred on March 30, 2012.
6. R.C.F.C. 30(a)(2)(B) requires leave of the Court to depose an incarcerated individual.
7. A form of order is attached to this motion that granting leave to depose Mr. Ruble.

WHEREFORE, the United States respectfully requests that this Honorable Court grant this motion.

UNITED STATES OF AMERICA,  
Defendant

/s/ Dennis M. Donohue  
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Date: April 6, 2012

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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SANTANDER HOLDINGS USA, INC. & )  
SUBSIDIARIES, )  
Plaintiff, ) Case No. 09-cv-11043  
v. ) Hon. George A. O'Toole, Jr.  
UNITED STATES OF AMERICA, ) April 6, 2012  
Defendant. )  
\_\_\_\_\_  
)

**UNITED STATES' F. R. CIV. P. 30(a)(2)(B) MOTION FOR LEAVE TO DEPOSE  
AN INMATE**

Defendant United States of America respectfully moves this Honorable Court for an order under Rule 30(a)(2)(B) of the Federal Rules of Civil Procedure granting leave to depose Mr. Raymond J. Ruble (inmate number 58202-054), an incarcerated individual.

In support of this motion, the United States submits:

1. Mr. Ruble is incarcerated the United States Penitentiary located in Lewisburg, PA, 200 miles north of Washington, DC and 170 miles west of Philadelphia, PA.
2. The United States seeks to depose Mr. Ruble as part of discovery in this case. On information and belief, Mr. Ruble was the primary author of the prototype STARS opinion issued by Sidley Austin LLP (f/k/a/ Sidley Austin Brown & Wood) ("SABW").
3. Mr. Ruble was later convicted of multiple counts of income tax evasion in connection with his role concerning a tax shelter known as BLIPS, which was

designed and marketed by KPMG and affiliates. *United States v. Raymond J. Ruble*, 2009 U.S. Dist. LEXIS 34908, \*1 (S.D.N.Y. 2009). With respect to the BLIPS and other shelters at issue in the criminal case, Mr. Ruble was involved with designing tax shelters and worked with KPMG to “offer ostensibly independent tax opinions as to the likelihood that the tax shelters would survive Internal Revenue Service (“IRS”) scrutiny.” *United States v. Ruble* at \*3-4.

4. While Mr. Ruble may assert his Fifth Amendment Privilege in response to questions regarding his role in the STARS transaction, the United States will seek that an adverse inference be drawn from his refusal to testify. While an assertion of the privilege cannot be used to the detriment of a criminal defendant, a court may constitutionally permit a jury to draw an adverse inference from the refusal to testify on Fifth Amendment grounds by either a witness or party in a civil suit. *See Baxter v. Palmigiano*, 425 U.S. 308, 318, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976) (“[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.”); *RAD Services, Inc. v. Aetna Casualty and Surety Co.*, 808 F.2d 271, 276-77 (3<sup>rd</sup> Cir. 1986), citing *Brink's Inc. v. City of New York*, 717 F.2d 700 (2d Cir. 1983), and *Rosebud Sioux Tribe v. A & P Steel, Inc.*, 733 F.2d 509 (8<sup>th</sup> Cir. 1984). As such, his testimony, even if he asserts the privilege, will be relevant and probative here.

5. The parties stipulated that, if leave under F. R. Civ. P. 30(a)(2)(B) is granted, this deposition can take place after the close of substantial fact discovery, which occurred on April 2, 2012.
6. F. R. Civ. P. 30(a)(2)(B) requires leave of the Court to depose an incarcerated individual.
7. A form of order is attached to this motion that granting leave to depose Mr. Ruble.

WHEREFORE, the United States respectfully requests that this Honorable Court grant this motion.

UNITED STATES OF AMERICA,  
Defendant

/s/ Dennis M. Donohue  
DENNIS M. DONOHUE (OH Bar #0026504)  
Chief Senior Litigation Counsel  
JOHN L. SCHOENECKER (D.C. Bar #496720)  
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Date: April 6, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on April 6, 2012.

/s/Kari M. Larson  
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